UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE NASHVILLE DIVISION

APPALACHIAN VOICES,)
CENTER FOR BIOLOGICAL	
DIVERSITY, and)
SIERRA CLUB,)
)
Plaintiffs,) Case No. 3:23-cv-00604
) District Judge Eli J. Richardson
V.) Magistrate Judge Barbara D. Holmes
)
TENNESSEE VALLEY AUTHORITY,)
)
Defendant.)
)

PLAINTIFFS' MOTION TO COMPLETE THE ADMINISTRATIVE RECORD

Pursuant to Federal Rule of Civil Procedure 7, Local Rule 7.01(a), and the Court's Scheduling Order, ECF No. 23 at 7, Plaintiffs Appalachian Voices, Center for Biological Diversity, and Sierra Club (collectively, Conservation Groups) move this Court for an order compelling Defendant Tennessee Valley Authority (TVA) to complete the administrative record in this case. Counsel for Conservation Groups has conferred in good faith with Counsel for TVA regarding the relief requested. *See* ECF No. 23 at 7; M.D. Tenn. R. 7.01(a). Counsel for TVA has indicated that TVA opposes this motion.

Conservation Groups seek judicial review under the Administrative Procedure Act, 5 U.S.C. §§ 701–706, of TVA's decision to build a new gas-fired power plant in Middle Tennessee without first considering its effects on the climate, environment, and power customers pursuant to the National Environmental Policy Act, 42 U.S.C. § 4321 *et seq.* Under the Administrative Procedure Act, a court reviews agency action based on "the whole record." 5 U.S.C. § 706. "[R]eview is to be based on the full administrative record that was before the [decisionmaker] at

the time he made his decision." *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 420 (1971), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977).

For the reasons discussed in the accompanying Memorandum of Facts and Law, Conservation Groups respectfully request that the Court grant their Motion and compel TVA to include in the Administrative Record:

- 1) TVA's August 11, 2021 contract with the Tennessee Gas Pipeline Company and any expenses incurred in fulfilment of TVA's obligations under the contract;
- 2) TVA's December 22, 2022 contract with General Electric Company and any expenses incurred in fulfillment of TVA's obligations under the contract;
- 3) The "FY22 Budget Power Supply Plan" that "TVA staff utilized . . . as the basis for the [Cumberland] Alternatives analysis." AR 002419 (Final Environmental Impact Statement (EIS), App. B).
- 4) The "20-year study" TVA performed for each alternative "using expansion and production cost models." AR 002419 (Final EIS, App. B).
- 5) "TVA's financial and system analysis," which TVA cited as a basis for concluding that Alternative A (a combined-cycle gas plant and gas pipeline) was the Preferred Alternative. AR 002425 (Final EIS, App. B).
- 6) Interconnection and transmission "evaluations [TVA] conducted during the EIS" for Alternative C. AR 002415 (Final EIS, App. B).
- 7) The "reliability analysis" TVA "performed . . . to determine an appropriate combination of solar and storage resources to maintain year-round system reliability for Alternative C." AR 001870 (Final EIS).
- 8) The "current TVA load forecasts" of "increasing peak loads." AR 001875–76 (Final

EIS).

9) The "analysis for the entire TVA-wide power system [TVA] performed using industry standard capacity planning and production cost models, ABB's System Optimizer and Energy Exemplar's Aurora." AR 002115 (Final EIS).

Respectfully submitted,

/s O.W. "Trey" Bussey

O.W. "Trey" Bussey, TN BPR No. 037814 Amanda Garcia, TN BPR No. 033773 SOUTHERN ENVIRONMENTAL LAW CENTER 1033 Demonbreun Street, Suite 205 Nashville, TN 37203

Telephone: (615) 921-9470 Facsimile: (615) 921-8011

tbussey@selctn.org agarcia@selctn.org

Gregory Buppert, TN BPR No. 024340¹ Deirdre Dlugoleski, VA Bar No. 99327, admitted *pro hac vice* SOUTHERN ENVIRONMENTAL LAW CENTER 120 Garrett Street, Suite 400 Charlottesville, VA 22902 Telephone: (434) 977-4090

Facsimile: (434) 993-5549 gbuppert@selcva.org

Counsel for Appalachian Voices, Center for Biological Diversity, and Sierra Club

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¹ As required by Local Rule 83.01(d)(3), Mr. Buppert is a member of the Tennessee bar and has provided his Tennessee Board of Professional Responsibility number.

CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2024, I served a copy of the foregoing document on the following parties via the Court's electronic case filing system:

David Ayliffe, Director of Litigation Frances Regina Koho, Attorney Lane E. McCarty, Attorney Sydney D. Nenni, Attorney Office of the General Counsel Tennessee Valley Authority 400 West Summit Hill Drive Knoxville, TN 37902

/s O.W. "Trey" Bussey
O.W. "Trey" Bussey
Southern Environmental Law Center

Counsel for Appalachian Voices, Center for Biological Diversity, and Sierra Club